

1 **BEFORE THE BOARD OF ENVIRONMENTAL REVIEW**
2 **OF THE STATE OF MONTANA**

3 In the matter of the adoption) **PRESIDING OFFICER**
4 **REPORT**

5 of new rules I through X)
6 pertaining to storm water)
7 discharges)

8 In the matter of the amendment)
9 of ARM 17.30.1301, 17.30.1303,)
10 17.30.1304, 17.30.1322,)
11 17.30.1323, 17.30.1341,)
12 17.30.1351, 17.30.1361, and)
13 the repeal of ARM 17.30.1332)
14 pertaining to Montana)
15 Pollutant Discharge)
16 Elimination System Permits)

17 **INTRODUCTION**

18 1. On November 18, 2002, I presided over and
19 conducted the public hearing held in Room 111 of the
20 Metcalf Building, 1520 East Sixth Avenue, Helena, Montana,
21 to take public comment on the above-captioned matters.
22 Notice of the hearing was contained in 2002 Montana
23 Administrative Register (MAR), Issue No. 19, MAR Notice
24 No. 17-174 and MAR Notice No. 17-175, published on October
25 17, 2002. A copy of each notice is attached to this
26 report.

27 2. The hearing began at about 9 a.m. and concluded
at about 9:30 a.m. A court reporter, Rosi E. Christensen,
recorded the hearing.

 3. I announced that persons at the hearing would be
given an opportunity to submit their data, views, or
arguments concerning the proposed action, either orally or
in writing.

1 4. At the hearing I identified and summarized the
2 MAR notices, stated that copies of the MAR notices were
3 available in the hearing room, read the Notice of Function
4 of Administrative Rule Review Committee as required by
5 Mont. Code Ann. § 2-4-302(7)(a), informed the persons at
6 the hearing of the rulemaking interested persons list and
7 of the opportunity to have their names placed on that
8 list, recited the authority to make the proposed
9 rulemakings, announced the opportunity to present matters
10 at the hearing or in writing, as stated in the MAR
11 notices, and explained the order of presentation.

12 5. At the conclusion of the hearing I announced that
13 the proposed rulemakings were expected to be considered by
14 the Board at its first regular meeting in 2003.

15 **SUMMARY OF HEARING**

16 6. Brian Heckenberger, Storm Water Program
17 Coordinator, DEQ, made an oral statement discussing the
18 history of regulation of storm water discharges, the
19 purpose of the proposed rules, and summarizing the
20 proposed rulemakings. The proposed rulemakings put all
21 the requirements for storm water discharge permits into a
22 concise regulatory package that satisfies Phase I and
23 Phase II requirements issued by the United States
24 Environmental Protection Agency. New Rule VIII implements
25 the statutory notice of intent process for construction
26 activity to be covered by a general permit.

1 7. No other person made an oral statement at the
2 hearing.

3 **SUMMARY OF WRITTEN MATERIALS**

4 8. DEQ Legal Counsel submitted written comments on
5 November 27, 2002, with HB 521 and HB 311 analyses for
6 each proposed rulemaking, which are attached hereto.

7 9. No other written comments were received. The
8 period to submit comments ended on November 27, 2002.

9 **PRESIDING OFFICER COMMENTS**

10 10. The Board has jurisdiction to adopt rules for the
11 administration of Water Quality laws. Mont. Code Ann.
12 § 75-5-201, -401.

13 11. House Bill 521 (1995) generally provides that the
14 Board may not adopt a rule that is more stringent than
15 comparable federal regulations or guidelines, unless the
16 Board makes written findings after public hearing and
17 comment. The proposed new rules and amendments and repeal
18 are not more stringent than a comparable federal
19 regulation or guideline. Therefore written findings are
20 not necessary.

21 12. House Bill 311 (1995), the Private Property
22 Assessment Act, codified as Mont. Code Ann. § 2-10-101
23 through -105, provides that a state agency must complete a
24 review and impact assessment prior to taking an action
25 with taking or damaging implications. The proposed
26 rulemakings affect real property. Private Property
27 Assessment Act Checklists were prepared in these matters.

1 The proposed rulemakings do not have taking or damaging
2 implications. Therefore, no further HB 311 assessment is
3 necessary.

4 13. The procedures required by the Montana
5 Administrative Procedure Act, including public notice,
6 hearing, and comment, have been followed.

7 14. The Board may adopt the proposed new rules and
8 rule amendments, and repeal, or reject them, or adopt them
9 with revisions not exceeding the scope of the public
10 notices.

11 15. Under Mont. Code Ann. § 2-4-305(7), for any acts
12 in the rulemaking process to be valid, the Board must
13 publish a notice of adoption within six months of the date
14 the Board published the notice of proposed rulemaking in
15 the Montana Administrative Register, or by April 17, 2003.

16 Dated this _____ day of December, 2002.

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THOMAS G. BOWE
Presiding Officer

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